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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
24

25 CORY SPENCER, an individual;
26 DIANA MILENA REED, an
individual; and COASTAL
27 PROTECTION RANGERS, INC., a
28 California non-profit public benefit

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' SUPPLEMENTAL
BRIEF IN OPPOSITION TO
INDIVIDUAL DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

Case No. 2:16-cv-02129-SJO (RAOx)

PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO
INDIVIDUAL DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

1 corporation,

2 Plaintiffs,

3 v.

4 LUNADA BAY BOYS; THE
5 INDIVIDUAL MEMBERS OF THE
6 LUNADA BAY BOYS, including but
7 not limited to SANG LEE, BRANT
8 BLAKEMAN, ALAN JOHNSTON
9 AKA JALIAN JOHNSTON,
10 MICHAEL RAE PAPAYANS,
11 ANGELO FERRARA, FRANK
12 FERRARA, CHARLIE FERRARA,
13 and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

14 Defendants.

Complaint Filed: March 29, 2016
Trial Date: December 12, 2017

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1 **I. INTRODUCTION**

2 While the Individual Defendants plead with the Court to take this case away
3 from the jury, their reasons become all the clearer as the case progresses and with
4 the additional evidence that Defendants have now been forced to produce. The
5 additional evidence shows:

- 6 • At the time Defendants filed their motions for summary judgment in
7 late July—and their supporting reply briefs on August 17—they knew
8 there was other evidence in the case that had not yet been produced.
- 9 • There were numerous text messages between Defendants that further
10 confirm their unity of purpose and common design (as part of the Bay
11 Boys) to exclude the general public—“kooks,” “outsiders,” “non-
12 locals”—from visiting or surfing at Lunada Bay.
- 13 • There were numerous text messages between Defendants that further
14 confirm that they (as part of the Bay Boys) coordinated their
15 exclusionary efforts—with specific calls to action when “kooks” came
16 to Lunada Bay and specific mentions of preventing “kooks” from
17 catching any waves so that “they never come back.”
- 18 • There were text messages between Defendants in which they
19 specifically refer to each of the Plaintiffs on a day that person tried to
20 visit Lunada Bay.
- 21 • Even to this date, there are numerous gaps in what Defendants
22 produced. Most telling, there are huge gaps in Defendants’ production
23 of their text messages, with some producing records with several
24 months of text messages missing—or omitting messages that they
25 obviously sent or received, as shown by records from other Defendants.

26 Defendants undoubtedly will try to ascribe different meanings to this
27 evidence. But disagreements as to meaning only confirm that there are genuine
28 issues of material fact here, precluding summary judgment or adjudication. It is the

1 province of the jury to judge Defendants' credibility, weigh evidence, and consider
2 the inferences that can be drawn from evidence. *See, e.g., Cockrum v. Whitney*, 479
3 F.2d 84, 86 (9th Cir. 1973) (citing *Tennant v. Peoria & P.U. Ry. Co.*, 321 U.S. 29,
4 35 (1944)).

5 The jury should be allowed to decide for itself whether Defendants are lying,
6 whether to infer from the evidence that Defendants had a unity of purpose and
7 common design to exclude "kooks" from Lunada Bay, and whether to infer from the
8 evidence that Defendants participated in excluding "kooks" from Lunada Bay.
9 Plaintiffs accordingly ask the Court to deny Defendants' motions for summary
10 judgment.

11 **II. STATEMENT OF FACTS**

12 **A. Procedural Overview**

13 On October 3, 2017, the Court granted Plaintiffs' Rule 56(d) motions against
14 certain of the Individual Defendants, allowing Plaintiffs to submit this supplemental
15 brief. In the meantime, however, on October 16, 2017, Defendants Charlie and
16 Frank Ferrara withdrew their motions for summary judgment. Although the
17 remaining Individual Defendants may file a reply in line with the Court's Order,
18 they may not introduce new evidence to support their motions in their reply. *See,*
19 *e.g., Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010); *Provenz v. Miller*, 102
20 F.3d 1478, 1483 (9th Cir. 1996).

21 **B. The Additional Evidence Must Be Viewed In The Context Of All The 22 Evidence To Date Showing That The Bay Boys Act In Concert To Exclude The General Public From Lunada Bay.**

23 To refresh, the Individual Defendants are members of the Bay Boys. (PAMF
24 24-88.) As part of the Bay Boys, Defendants have a unity of purpose and common
25 design to exclude the general public, particularly "outsiders" or "non-locals" (whom
26 they call "kooks"—and much worse names), from visiting or surfing at Lunada Bay.
27 (PAMF 35, 39, 40, 50, 52, 54, 56, 58, 60, 62, 72.) This purpose is well-known. A
28 police dispatcher stated: "We know all of them. They're infamous around here. . . .

1 They don't like anyone that's not one of the Bay Boys surfing down there." (PAMF
2 ISO City MSJ 166 [Dock. No. 323]; Franklin Decl., Ex. 37 [Docket No. 324].)

3 The ways in which the Bay Boys pursue this purpose are also well-known.
4 These are their "rules"—their "terms of engagement." (PAMF 26, 29-32, 34, 35, 77,
5 84, 87.) The Bay Boys harass and intimidate "outsiders" who visit or try to surf at
6 Lunada Bay, from the moment they arrive, including by ensuring large numbers of
7 Bay Boys are present when visitors come, surrounding and blocking paths to the
8 shoreline, approaching visitors aggressively, calling visitors derogatory names like
9 "kook," "gook," and "fucking faggot," telling visitors they cannot or should not be
10 coming to Lunada Bay, heckling, starting or trying to start fights, throwing rocks at
11 visitors, vandalizing cars, circling surfers in the water so that they cannot catch
12 waves, and dangerously "dropping in" on or "burning" surfers. (PAMF 35.)

13 The evidence discussed in Plaintiffs' Opposition papers includes: a recording
14 in which a Bay Boy discusses that there is hazing and pressure to do things that are
15 "uncalled for" to prove that they belong (PAMF 36); text messages demanding
16 participation, e.g., "If you really want to be a Bay Boy, you'll show up" (PAMF 38,
17 39); and e-mails stating, "I WILL DIE BY THESE RULES," and urging others who
18 see outsiders, "DON'T THINK TWICE N LETS TAKE BACK WHAT THEY R
19 TAKING FROM US," and "DO NOT FEEL GUILTY WHEN TAKING BACK
20 WHAT WAS OURS IN THE FIRST PLACE." (PAMF 36-42.)

21 Moreover, the Bay Boys are organized, using e-mail, mobile phone calls, and
22 text messages to coordinate. Bay Boys patrol Paseo Del Mar in their cars or trucks
23 while on their cell phones. (PAMF 30-63.) Moments after they see a visitor along
24 the bluffs, additional gang members arrive as reinforcements. (*Id.*) Messages are
25 also relayed from Bay Boys at the top of the bluffs to those down below on the
26 shore regarding approaching visitors. (PAMF 40.)

27 ///

28 ///

C. The Additional Evidence Underscores The Unity Of Purpose And Common Design Of The Bay Boys (Including The Individual Defendants)—And Their Standard Methods Of Operation.

Among the additional evidence produced are numerous text messages that further confirm that Defendants (as part of the Bay Boys) seek to exclude “kooks” from Lunada Bay, including by preventing them from catching waves.

As one example, below is a text from a non-party Bay Boy to Defendant Angelo Ferrara expressing the goal that “kooks are getting stuffed and burned”:

Date	Evidence	Discovery Notes	Citations ¹
1/16/16	Text (Walton to A. Ferrara): “By the way I heard today is one of those ‘surf the bay days’!!!! Boogie boarders and everybody!!! There is a little bit is Surf, there’s some swell out there but nothing spectacular but I hope it’s packed in those kooks are getting stuffed and burned and that’s about it no further than that. You know what I mean!?!?!...”		PSAMF 98.

Likewise, the following exchange between Defendant Papayans and another non-party Bay Boy discusses the Bay Boys’ ongoing practice of stopping “kooks” from catching waves:

Date	Evidence	Discovery Notes	Citations
1/22/16	Text (Lamers to Papayans): “Pathetic we had two kooks out two days ago when I surfed and me and jack just sat right on his ass”	Papayans testified at deposition that he never had any texts with anyone about “outsiders” coming to	PSAMF 89.

¹ PSAMF, here and throughout, refers to Plaintiffs' Supplemental Additional Facts in Opposition to Individual Defendants’ Motions for Summary Judgment, filed herewith.

		Lunada Bay.	
1/22/16	Text (Lamers to Papayans): “He didn’t catch a single wave.”	See above.	<i>Id.</i>
1/22/16	Text (Papayans to Lamers): “That’s the way to do it bro no reason to confront anybody does not let him get waves and they never come back.”	See above.	<i>Id.</i>
1/22/16	Text (Lamers to Papayans): “Exactly that’s how it has to be kooks come out then no fun waves so simple.”	See above.	<i>Id.</i>

D. The Additional Evidence Sheds Further Light On The Interactions Between The Bay Boys (Including The Individual Defendants) On The Days That Plaintiffs Tried To Visit Lunada Bay—And Otherwise Regarding Plaintiffs—Further Confirming That Their Actions Towards Plaintiffs Furthered The Bay Boys’ Unity Of Purpose And Common Design.

Text messages in the additional evidence show at least some of Defendants’ communications on the days on which Plaintiffs tried to visit Lunada Bay. Consistent with evidence discussed in Plaintiffs’ Opposition papers, the messages show Defendants (as part of the Bay Boys) communicating to rally a large presence of Bay Boys to protect Lunada Bay from the perceived intrusion:

Date	Evidence	Discovery Notes	Citations
1/29/16	Text (Lee to A. Ferrara): “Taloa n his buddies r coming up to the bay today n tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us)”	Lee failed to produce this text in discovery. Papayans testified at deposition that he never had any texts with anyone about “outsiders” coming to Lunada Bay.	PSAMF 92, 105, 112.
1/29/16	Text (Unknown to S. Lee, Papayans, Mowat and 7 others): “The kook is here at the bay	See above.	PSAMF 90, 92, 105, 112.

	right now.”		
1/29/16	Text (Mowat to Papayans, Lee, and 7 others): “On my way!!!!”	See above.	PSAMF 90, 92, 105, 112.
1/29/16	Text (Papayans to Lee, Mowat, and 7 others): “I’m up”	See above.	PSAMF 90, 92, 105, 112.
1/29/16	Text (Unknown to Papayans, Lee, Mowat, and 7 others): “There are two kooks he’s got a little baldheaded white guy with them he looks like a boogie board or to fuck what a joke!”	See above. Also, this text can be inferred to refer to one of the Plaintiffs.	PSAMF 90, 92, 96, 105, 112.
1/29/16	Text (Mowat to Papayans, Lee, and 7 others): “Yep. He’s here.”	See above.	PSAMF 90, 92, 96, 105, 112.
1/29/16	Text (Papayans to Lee, Mowat, and 7 others): “Michelle get to the bay and rouse these kooks”	See above.	PSAMF 90, 92, 96, 105, 112.
1/29/16	Text (Unknown to Papayans, Lee, Mowat, and 7 others): “Lol ok I’m on my way”	See above.	PSAMF 90, 92, 96, 105, 112.
1/29/16	Text (Papayans to Mowat, Lee, and 7 others): “Get him Charlie, just go shake his hand, tell him we missed him and can’t believe he didn’t make any of these latest headlines, he should be ashamed.”	See above.	PSAMF 90, 92, 96, 105, 112.
1/29/16	Text (Mowat to Papayans, Lee, and 7 others): “He’s in the water. Only five guys out. Get down here boys. I’m out there.”	See above.	PSAMF 90, 92, 96, 105, 112.

Consistent with evidence discussed in Plaintiffs’ Opposition papers, the calls to “surf” and “get down here” implicitly mean to come prevent the “kooks” from catching waves and otherwise harassing and intimidating “kooks” with the aim of

1 having them leave and never return.

2 Additionally, the timeline of these texts gives further insight into the evidence
3 discussed in Plaintiffs' Opposition papers that, on January 29, 2016, Defendant Lee
4 called Defendant Blakeman 62 times within a 30-minute span. Although Blakeman
5 argues in his reply papers that these calls were between 9:30 and 10:03 p.m. at night,
6 he is misreading the cell phone records, which show time in UTC. After conversion
7 to Pacific Standard Time, the 62 calls occurred between 1:30 and 2:03 p.m.—also
8 during daytime on the same date as the texts discussed above. (PSAMF 100;
9 Franklin Decl., Ex. 25.)

10 In turn, on February 5, 2016, when Plaintiffs again tried to visit Lunada Bay,
11 text messages confirm that Defendants (as part of the Bay Boys) put out the call to
12 assemble as many Bay Boys as possible:

Date/Time	Evidence	Discovery Notes	Citations
2/5/16	Text (Thiel to Papayans, Blakeman, Mowat): “Surf looks like it could get epic today. There's five kooks standing on top of the trail with their own personal photographer taking pictures of them posing. I think it's the same Taloa crew. This could get ugly today. We all need to surf.”	Blakeman failed to produce this text in discovery—and testified at deposition that he only used his cell phone to receive texts from his wife, not others.	PSAMF 93, 108, 113.
2/5/16	Text (Mowat to Papayans, Blakeman, Thiel): “Too bad this bitch that called the cops on Mel is such a cunt. She sure has a great rack and ass!”	See above. Also, this text can be inferred to refer to Plaintiff Reed, who contacted the police regarding David Melo on January 29, 2016.	PSAMF 93.
2/5/16	Text (Thiel to Mowat, Papayans, Blakeman):	See above.	<i>Id.</i>

1		“Fuck ... she's still down there???”	
2	2/5/16	Text (Mowat to Thiel, Papayans, Blakeman):	<i>Id.</i>
3		“No, they are all gone. Ghost town Lunada. Just had an epic sess with just Sandoval out”	
4	2/5/16	Text (Mowat to Thiel, Papayans, Blakeman):	<i>Id.</i>
5		“Yep, business as usual. The patio is in good form”	

III. ARGUMENT

A. **The Additional Evidence Further Confirms That The Individual Defendants Each (As Part Of The Bay Boys) Had A Unity Of Purpose And Common Design To Exclude The General Public From Lunada Bay—And Are Liable As Joint Tortfeasors In A Conspiracy.**

While each Defendant has tried to downplay his exact role, “the major significance of [a] conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, *irrespective of whether or not he was a direct actor and regardless of the degree of his activity.*” *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (Cal. 1994) (emphasis supplied).

To prove a civil conspiracy, the plaintiff must show that the conspiring parties ‘reached a unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement.’ [] ‘. . . [E]ach participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy.’ [] A defendant’s knowledge of and participation in a conspiracy may be inferred from circumstantial evidence and from evidence of the defendant’s actions.

Gilbrook v. City of Westminster, 177 F.3d 839, 856-57 (9th Cir. 1999) (citations omitted). Moreover, “[o]nce a conspiracy is shown to exist, only slight evidence is required to connect a co-conspirator.” *United States v. Turner*, 528 F. 2d 143, 162 (9th Cir. 1975) (in criminal context).

The additional evidence further confirms and bolsters the case of conspiracy

1 against Defendants. As discussed in Plaintiffs' Opposition papers, Defendants'
2 unity of purpose and common design (as part of the Bay Boys) has been and
3 remains exclusion of the general public—particularly, “outsiders” or “kooks”—from
4 what should be a public beach at Lunada Bay, as the jury may infer from testimony
5 and recorded statements of Bay Boys and other party, non-party, and published
6 news accounts. *See* Plaintiffs' Opposition to Individual Defendants' Motions for
7 Summary Judgment at 11:4-11. Likewise, as discussed in Plaintiffs' Opposition
8 Papers, the Bay Boys appeared to coordinate their actions in furtherance of this
9 purpose and design through cell phones and text messages, as the jury may infer
10 from testimony of witnesses seeing their activities at Lunada Bay. *See id.* at 11:24-
11 12:1. Now, the additional evidence shows us the content of at least some of these
12 text messages—replete with references to “kooks,” calls for Bay Boys to come en
13 masse when “kooks” tried to come to Lunada Bay, and discussion of “burning”
14 them, preventing them from catching waves, and making them “never come back.”

15 This is more than sufficient evidence from which the jury may infer each
16 Defendant entered into the overarching Bay Boys conspiracy to exclude outsiders
17 from Lunada Bay. We have purpose and motive; we have stated “rules” or “terms
18 of engagement” by which the Bay Boys agreed to operate; we have communications
19 and concerted action. Indeed, in the stricter criminal context, courts have found
20 juries could reasonably infer conspiracy based on considerably less. In *People v.*
21 *Maciel*, a defendant gang member was found guilty of conspiracy to commit murder
22 without any direct evidence of communications indicating his agreement to join the
23 conspiracy:

24 Under analogous precedent, the jury could reasonably infer that defendant
25 entered the conspiracy to kill Moreno at one of those meetings or at some
26 point in April 1995, after he was sponsored by Shyrock into the Mexican
27 Mafia and before the April 22 murder. (*See People v. Jurado*, 38 Cal. 4th 72,
28 121 (2006) . . . “[a]lthough there is no direct evidence that defendant and [an
accomplice] discussed in advance the killing of [the victim], there was
evidence that they were alone together” “shortly before the killing, during
which a discussion and agreement could have taken place”].

1 *People v. Maciel*, 57 Cal. 4th 482, 516 (Cal. 2013). All the more so with the content
2 of some of Defendants' text messages finally produced, the jury should be allowed
3 to weigh the evidence, and Defendants' motions should be denied.

4 **B. The Additional Evidence Further Confirms That The Individual**
5 **Defendants Intentionally Concealed Or Destroyed Material Evidence,**
6 **Demanding An Adverse Inference Be Drawn In Plaintiffs' Favor—And**
7 **Resulting At A Minimum In Additional Disputes Of Material Fact.**

8 The additional evidence further shows that Defendants each concealed or
9 destroyed records of cell phone text messages and calls—as examples, certain
10 Defendants have large gaps of time in the records that they produced; and certain
11 Defendants produced text messages but omitted messages that they sent or received,
12 as shown by records produced by other Defendants. (PSAMF 102-113). As
13 discussed in Plaintiffs' Opposition, Plaintiffs are therefore entitled to the inference
14 that the destroyed evidence would have further supported them—and should be
15 allowed to reach the jury. *See* Plaintiffs' Opposition at 19:7-20:1.

16 **IV. CONCLUSION**

17 The additional evidence rounds out the picture that the jury could already
18 reasonably infer: the Bay Boys, including the Individual Defendants, have a history,
19 purpose and motive, and coordinated plans and activities, to exclude the general
20 public—the hated outsider, non-local “kooks”—from visiting or surfing at Lunada
21 Bay. Plaintiffs ask the Court to deny the Individual Defendants' motions for
22 summary judgment in their entirety.

23 DATED: October 18, 2017

HANSON BRIDGETT LLP

24
25 By: /s/ Kurt A. Franklin

KURT A. FRANKLIN

Attorneys for Plaintiffs